

REMARKS

The Office has indicated that Applicant's Response dated June 19, 2009 is considered non-compliant. Based on Applicant's submission herewith, Applicant respectfully submits that the requests set forth in the Notice of Non-Compliant Amendment have been met. Applicant respectfully requests that the enclosed Response be entered in the record.

Claims 1-20 are currently pending in this application and Claims 1-20 have been rejected by the Examiner. More specifically, Claims 1-3, 6, 8-9,13-14,19-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 6,901,381 B2) in view of Brotherston (US 2002/0010633 A1); claims 4-5, 7, 10-12 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brown et al. in view of Brotherson as applied to the respective independent claims, and further in view of the Examiner's Official Notice. Applicant has amended claims 1, 2, 5, 8, 11-12, 14 and 15, cancelled claims 4, 10, 13, 13 and added new claims 21-22. The amendments to the claims have merely clarified the claims, incorporated limitations previously included in dependant claims 4 and 10. Since there have been no substantive changes to the claims, Applicant respectfully submits that there is no basis for conducting an additional it search.

Applicant also traverses the Examiner's Official Notice with respect to the use of a personal digital assistant (PDA) in connection with the system for sales and inventory reconciliation and in connection with returning to and storing credit card authorization information in a database in order to signify a transaction. Based on the foregoing Amendments to the claims and the following Remarks, Applicant respectfully submits that the outstanding rejections have been traversed or are now moot.

**Applicant Traverses The Examiner's Official Notice
Regarding PDA Devices and Credit Card Information**

A. PDA Devices.

In connection with the Examiner's rejection of claims 4-5 and 15-17, the Examiner took Official Notice that "it is old and well none [*sic*] in the POS arts to have a PDA that can perform the functions as claimed by the applicant". Pursuant to MPEP Section 2144(C), Applicant traverses this Official Notice on the grounds that it is improper without supporting documentary evidence and explanation.

The Examiner's assertion that it is old and well known to have a PDA that performs the functions described in the subject application is improper because it is not supported by documentary evidence or an underlying technical line of reasoning. An examiner may only take notice of facts asserted to be common knowledge in the art that "are capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A). Otherwise, an examiner is required to supplement the record with documentary evidence supporting the notice in order to maintain the rejection. *Ex Parte Sobecks*, 2007 WL 3257500, at *6 (B.P.A.I. November 2, 2007). Additionally, where notice is taken of a fact, an examiner must provide the applicant with the "explicit basis on which the examiner regards the matter as subject to official notice." MPEP § 2144.03(B).

In the Office Action, the Examiner has failed to comply with these requirements. The question of whether a PDA that performs the functions described in the subject application was "old and well known" in March of 2003, the priority date for the subject application, is not capable of instant and unquestionable recognition as being true. "Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art...". *Ahlert*, 424 F.2d at 1091. As stated above, the Examiner has

offered no basis whatsoever for taking notice that a PDA, as described above, is “old and well known”. Therefore, Applicants respectfully request that either the assertion and accompanying obviousness rejections be withdrawn or the Examiner supplement the record with evidence substantiating this assertion.

B. Credit Card Information.

The Examiner has also taken Official Notice that it is old and well known “to have a credit entity return credit authorization and have it stored in a database as a form of record in order to signify the transaction” as a basis for rejecting claims 7 and 18. Applicant traverses this Official Notice on the grounds that it improper without supporting documentary evidence and explanation, as required by MPEP Section 2144(C).

The question of whether receiving credit card authorization data and storing it in a database as a record as described in the subject application was “old and well known” in March of 2003, the priority date for the subject application, is not capable of instant and unquestionable recognition as being true. As mentioned above, “[a]ssertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art...” *Ahlert*, 424 F.2d at 1091. The Examiner has offered no basis whatsoever for taking notice that receiving credit card authorization data and storing it in a database as a record, as described above, is “old and well known”. Therefore, Applicants respectfully request that either the assertion and accompanying obviousness rejections be withdrawn or the Examiner supplement the record with evidence substantiating this assertion.

Since the Examiner’s rejections of claims 4-5, 10-12 and 15-17 are based on the Official Notice that it is old and well known in the arts to employ a PDA to perform the functions as claimed by the Applicant, since Applicant has traversed the aforementioned Official Notice, and since the limitations in claims 4 and 10 have been incorporated into independent claims 1 and 8, Applicant

respectfully submits that the Examiner's rejections of claims 1-14 should be withdrawn as the combination of Browne and Brotherson do not disclose each and every element of the claims, namely, use of a PDA or handheld computing device. For these same reasons and based on the amendments to claim 15 requiring a PDA, Applicant further submits that the Examiner's rejections of claims 15-21 should also be withdrawn.

CONCLUSION

It is believed that the application has complied with all outstanding requirements and traversed all outstanding rejections. Therefore, Applicant requests entry of the present amendments and examination of the pending claims in view thereof. Commissioner is authorized to charge any fee deficiency, or credit any overpayments, to Deposit Account No. 502261. The Examiner is invited to contact the undersigned if the Examiner believes a telephone conference would expedite allowance of the present claims and application.

Respectfully submitted,

Dated: October 23, 2009

By: /Michael A. Carrillo/

Michael A. Carrillo, Reg. No. 44,595
Neal Gerber & Eisenberg, LLP
Two North LaSalle Street, Suite 1700
Chicago, Illinois 60602-3801
312.269.8000